

Senate Bill No. 667

CHAPTER 367

An act to amend Section 10502 of, and to add and repeal Article 1.5 (commencing with Section 10506.4) of Chapter 2.1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor September 20, 2006. Filed with
Secretary of State September 20, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 667, Migden. Public contracts: competitive bidding: University of California.

(1) Existing law requires the Regents of the University of California to give public notice of a project to bidders by publication once a week for at least 2 consecutive weeks next preceding the day set for the receiving of bids.

This bill would instead require the regents to give public notice of a project by publication twice within the 60-day period preceding the day set for the receiving of bids.

(2) Existing law authorizes the Regents of the University of California to enter into contracts for the erection, construction, alteration, repair, or improvement of a university structure and requires the regents to award contracts for projects to the lowest responsible bidder.

This bill would, until January 1, 2012, establish the Best Value Construction Contract Pilot Program, which authorizes a single University of California campus located in the City and County of San Francisco to award contracts based on the best value, to the university, as defined. This bill would require the university to observe specified procedures when awarding best value contracts, as provided. This bill would require, on or before January 1, 2010, the Regents of the University of California to submit a report to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee regarding the pilot program, to include specified information.

(3) This bill requires bidders to verify specific information under oath, thereby imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 10502 of the Public Contract Code is amended to read:

10502. The Regents of the University of California shall give public notice of a project to bidders by publication twice within the 60-day period preceding the day set for the receiving of bids as follows:

(a) In one newspaper of general circulation published in the county in which the major portion of the project is located and in one such trade paper circulated in the county in which the major portion of the work is to be done.

(b) The notices shall state the time and place for the receiving and opening of sealed bids, describe in general terms the work to be done, and describe the bidding mode by which the lowest responsible bidder will be selected.

SEC. 2. Article 1.5 (commencing with Section 10506.4) is added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 1.5. Best Value Construction Contracting Pilot Program

10506.4. (a) This article provides for a pilot program for the University of California when awarding construction contracts, applicable only to a single University of California campus located in the City and County of San Francisco.

(b) The Regents of the University of California shall let any contract for a project pursuant to this article to the lowest responsible bidder or else reject all bids.

(c) The lowest responsible bidder may be selected on the basis of the best value to the university, as defined in Section 10506.5. In order to implement this method of selection, the Regents of the University of California shall adopt and publish procedures and required criteria that ensure that all selections are conducted in a fair and impartial manner. These procedures shall conform to the requirements of Sections 10506.6 and 10506.7 and shall be mandatory for the University of California campuses in the pilot program.

(d) If one or more of the bids is substantially equal to the lowest bid, and at least one of those bidders is a disadvantaged business enterprise, a women business enterprise, or a disabled veteran business enterprise, the regents may award the contract in accordance with the policies and procedures adopted pursuant to Section 10500.5.

(e) If the regents deem it to be for the best interest of the university, the regents may, on the refusal or failure of the successful bidder for a project to execute a tendered contract, award it to the second lowest responsible bidder. If the second lowest bidder fails or refuses to execute the contract, the regents may likewise award it to the third lowest responsible bidder.

10506.5. For purposes of this article, the following definitions apply:

(a) “Best value” means a procurement process whereby the lowest responsible bidder may be selected on the basis of objective criteria with the resulting selection representing the best combination of price and qualifications.

(b) “Best value contract” means a contract entered into pursuant to the provisions of this article.

(c) “Best value contractor” means a properly licensed person, firm, or corporation that submits a bid for, or is awarded, a best value contract.

(d) “Demonstrated management competency” means the experience, competency, capability, and capacity of the proposed management staffing to complete projects of similar size, scope, or complexity.

(e) “Financial condition” means the financial resources needed to perform the contract. The criteria used to evaluate a bidder’s financial condition shall include, at a minimum, capacity to obtain all required payment bonds, performance bonds, and liability insurance.

(f) “Labor compliance” means the ability to comply with, and past performance with, contract and statutory requirements for the payment of wages and qualifications of the workforce. The criteria used to evaluate a bidder’s labor compliance shall include, as a minimum, the bidder’s ability to comply with the apprenticeship requirements of the California Apprenticeship Council and the Department of Industrial Relations, its past conformance with such requirements, and its past conformance with requirements to pay prevailing wages on public works projects.

(g) “Qualifications” means financial condition, relevant experience, demonstrated management competency, labor compliance, the safety record of the bidder, and, if required by the bidding documents, some or all of the preceding qualifications as they pertain to subcontractors proposed to be used by the bidder for designated portions of the work.

(h) “Relevant experience” means the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity.

(i) “Safety record” means the prior history concerning the safe performance of construction contracts. The criteria used to evaluate a bidder’s safety record shall include, as a minimum, its experience modification rate for the most recent three-year period, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period.

(j) “University” means the University of California.

10506.6. The university shall proceed in accordance with the following when awarding best value contracts under this article.

(a) The university shall prepare a solicitation for bids and give notice pursuant to Section 10502.

(b) The university shall establish a procedure to prequalify bidders. The information required pursuant to this section shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that

information is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) Each solicitation for bids shall do all of the following:

(1) Invite prequalified bidders to submit sealed bids in the manner prescribed by this article.

(2) Include a section identifying and describing the following:

(A) Criteria that the university will consider in evaluating bids.

(B) The methodology and rating or weighting system that will be used by the university in evaluating bids.

(C) The relative importance or weight assigned to the criteria identified in the request for bids.

(d) Final evaluation of the best value contractor shall be done in a manner that prevents cost or price information from being revealed to the committee evaluating the qualifications of the bidders prior to completion and announcement of that committee's decision.

10506.7. Selection of the best value contractor shall be made as follows:

(a) The university shall evaluate the qualifications of the bidders based solely upon the criteria set forth in the solicitation documents, and shall assign a qualifications score to each bid.

(b) The award of the contract shall be made to the bidder whose bid is determined, by the university in writing, to be the best value to the university. To determine the best value contractor, the university shall divide each bidder's price by its qualifications score. The lowest resulting cost per quality point will represent the best value bid.

(c) The university shall issue a written decision of its contract award.

(d) Upon issuance of a contract award, the university shall publicly announce its award identifying the best value contractor to which the award is made, the project, the project price, and the selected best value contractor's score based on the evaluation criteria listed in the request for bids. The notice of award shall be made public and include the score of the selected best value contractor in relation to all other responsive bidders and their respective prices. The contract file shall include documentation sufficient to support the decision to award.

10506.8. On or before January 1, 2010, the Regents of the University of California shall submit a report to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee. The report shall include, but is not limited to, the following information:

(a) A description of the projects awarded using the best value procedures.

(b) The contract award amounts.

(c) The best value contractors awarded the projects.

(d) A description of any written protests concerning any aspect of the solicitation, bid, or award of the best value contracts, including the resolution of the protests.

(e) A description of the prequalification process.

(f) The criteria used to evaluate the bids, including the weighting of the criteria and an assessment of the effectiveness of the methodology.

(g) If a project awarded under this article has been completed, an assessment of the project performance, to include a summary of any delays or cost increases.

10506.9. This article shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.